



राजपत्र, हिमाचल प्रदेश

(अप्रमाधाराणा)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, सोमवार, 21 अक्टूबर, 1974/29 आश्विन, 1896

GOVERNOR'S SECRETARIAT, HIMACHAL PRADESH

NOTIFICATION

Simla-4, the 11th October, 1974

No. 33-67/73-GS(9).—Whereas, on a petition presented by Shri Madhvindra Sharma, Advocate, Simla, before the Governor of Himachal Pradesh, a question arose within the meaning of Article 192(1) of the Constitution, whether Dr. Y. S. Parmar, Chief Minister, H. P., a Member of the H. P. Vidhan Sabha, had incurred a disqualification under Article 191 of the Constitution for being a Member of the said Vidhan Sabha, by accepting the office of the Director/Chairman of the Nahan Foundry Pvt. Ltd;

And whereas, the Governor referred the said question for the opinion of the Election Commission as required under Article 192(2) of the Constitution;

And whereas, the Election Commission has since tendered its opinion, appended below, on the said question;

Now, therefore, the Governor acting according to the said opinion of the Election Commission is pleased to hold that Dr. Y. S. Parmar has incurred no such disqualification as alleged in the petition of Shri Madhvindra Sharma and is further pleased to dismiss the said petition.

R. K. ANAND,
Secretary.

ELECTION COMMISSION OF INDIA

OPINION

This is a reference under Article 192 of the Constitution from the Governor of Himachal Pradesh arising out of the petition presented before him by one Shri Madhvindra Sharma, Advocate, Simla.

In his petition, Shri Madhvindra Sharma alleges that the respondent Dr. Y. S. Parmar, Chief Minister of Himachal Pradesh and an elected member of the Legislative Assembly of that State, has incurred a disqualification for being a member of that Assembly for the reason that he is holding the office of Director-Chairman of the Board of Directors of the Nahan Foundry (Limited), Nahan, a Government Company, which is an office of profit under the State Government. According to the petitioner, under the Articles of Association of the Nahan Foundry (Limited), the office of a Director-Chairman of that Company carries a salary and allowances and the Legislative Assembly of Himachal Pradesh has not declared by law that the holder of the said office would not be disqualified for being chosen as, and for being, a member of the Legislative Assembly of Himachal Pradesh. The petitioner also alleges that the respondent in his capacity as Director-Chairman of the said Company has a car of the Company at his disposal which is being used by him, besides other amenities and benefits allowed to him.

The Commission issued a notice to Dr. Parmar on the 8th July, 1974, directing him to file a written statement supported by an affidavit in proper form replying to the allegations contained in the petition. The petitioner Shri Madhvindra Sharma was also directed by a notice dated 8 July, 1974 to file necessary affidavits and produce necessary documents on or before 1 August, 1974 in support of the allegations contained in his petition to the Governor. When the petitioner failed to comply with the directions in that notice by 1 August, 1974, he was reminded. The petitioner has not cared to reply so far. A copy of the Article of Association of the Nahan Foundry (Limited) and certain other relevant papers relating to the appointment of Directors and Chairman of the said Company were also obtained through the Governor of Himachal Pradesh.

In his reply, supported by an affidavit, Dr. Parmar has admitted that he has been nominated by the Governor as Director-Chairman of the Board of Directors of the Nahan Foundry (Limited). But he has denied that any salary, profit or emoluments are attached to the office held by him. According to him, it was decided by the Government in September/October, 1973 that officers and officials appointed to the Boards of Directors of Public Sector Enterprises/Undertakings as part time directors or in addition to their normal duties, shall not be entitled to any remuneration or allowances whatsoever. In support of this statement, he has enclosed a copy of the Government's order dated 17th October, 1973 and also an affidavit from the General Manager and Secretary, the Nahan Foundry (Limited), Nahan to the effect that no remuneration or profit in any shape or form is

attached to the office of Director or Chairman of the Board of Directors of the Company and Dr. Parmar has not been paid even T. A. or D. A. or any other kind of remuneration from the funds of the Company. He has also refuted the allegation regarding the use of the Company car and stated that no car of the Company is at his disposal or is being used by him or that any other amenities or benefits are allowed to him or enjoyed by him.

Dr. Parmar has also raised a preliminary objection to the effect that the petition itself is barred by the provisions of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971).

There is no dispute about the fact that Dr. Y. S. Parmar is holding the office of Director-Chairman of the Nahan Foundry (Limited), Nahan, and that this office is held by him either in an *ex-officio* capacity as Chief Minister of Himachal Pradesh or personally. The simple question therefore for my consideration is whether Dr. Y. S. Parmar is holding any office of profit under the Government of India or the Government of any State other than an office declared by the Legislature of the State by law not to disqualify its holders, within the purview of sub-clause (a) of clause (1) of Article 191 of the Constitution. Section 3 (b) and (m) of the Himachal Pradesh Legislative Assembly Members (Removal of Disqualifications) Act, 1971 (Act No. 7 of 1971) reads as follows:—

“3. *Prevention of disqualifications for membership of the Legislative Assembly of Himachal Pradesh.*—A person shall not be disqualified for being chosen as, and for being, a member of the Himachal Pradesh Legislative Assembly by reason only of the fact that he holds any of the following offices of profit under the Government of India or the Government of any State:—

(b) any office held by a Minister, Minister of State, or Deputy Minister whether *ex-officio* or by name ;

(m) the office of Chairman or Vice-Chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (1) if the holder of such office is not entitled to any remuneration other than compensatory allowance.”

Examining case of Dr. Parmar now before the Commission with reference to the above provisions, it is clear that as Dr. Parmar is holding the office of Director-Chairman of Board of Directors of the Nahan Foundry (Limited) in an *ex-officio* capacity as Chief Minister or by name, he is saved from any disqualification in that regard by virtue of the clear provisions of section 3 (b) of the Act referred to above. In this view, it becomes unnecessary for the Commission to go into the question of section 3 (m) of that Act also being applicable to the case. .

For the reasons stated above, the Commission holds, and accordingly tenders opinion to the Governor of Himachal Pradesh that Dr. Y. S. Parmar has not incurred any disqualification under Article 191 of the Constitution for being member of the Legislative Assembly of Himachal Pradesh.

Sd/- T. SWAMINATHAN,
Chief Election Commissioner of India.

